

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DAVID KING and RHONDA KING,
husband and wife,

Plaintiffs,

v.

KALAMA SCHOOL DISTRICT NO. 402
and JAMES SUTTON,

Defendants.

Case No. C05-5675RBL

ORDER

THIS MATTER is before the Court on Defendants' Motion for Costs and Partial Attorneys' Fees [Dkt. #248]. The Court has considered the motion, opposition, and reply together with the entirety of the record and files herein. For the reasons stated herein, the motion is **GRANTED** in part and **DENIED** in part.

In 2005 plaintiffs filed a complaint against the defendants in Cowlitz County Superior Court alleging violations of 42 U.S.C. §1983, RCW 41.56, and RCW 4.96.020. The defendants removed the case to this Court. After amending their complaint and after this Court's ruling on cross motions for summary judgment, the case was tried to a jury on plaintiffs' claims that defendants retaliated against him for exercising his First Amendment rights (union activities) and discriminated against him based on his age. The jury was also asked to consider whether plaintiffs were liable to defendants for malicious prosecution. After a ten-day jury trial, the jury returned verdicts in favor of defendants on plaintiffs' claims and in favor of plaintiffs on defendants' counterclaim for malicious prosecution. The defendants thereafter filed the instant motion seeking statutory

costs against plaintiffs in the amount of \$10,713.76 and attorneys' fees against plaintiffs' attorneys in the amount of \$15,860.50 pursuant to Fed. R. Civ. P. 11 and 28 U.S.C. §1927.

I. Attorneys' Fees Against Plaintiffs' Attorneys Pursuant to Fed. R. Civ. P. 11 and 28 U.S.C. §1927.

Defendants seek attorneys' fees against plaintiffs' attorneys Duane Crandall and Crandall O'Neill & McCreary for defending against plaintiffs' RCW 41.56 claim (dismissed on summary judgment), plaintiffs' RCW 4.96.020 claim (dismissed on summary judgment), plaintiffs' age discrimination claim, and plaintiffs' damages claim for constructive discharge. They seek fees directly against plaintiffs' counsel arguing that counsel filed these claims knowing they were unsupported by facts or law, were frivolous, were brought with the intent to harass defendants, and unnecessarily increased the cost of the litigation in violation of Fed. R. Civ. P. 11(b) and 28 U.S.C. §1927. The Court finds that plaintiffs' attorneys did not violate the above standards, and therefore declines to award defendants attorneys' fees.

II. Statutory Costs Against Plaintiffs David and Rhonda King.

Federal Rule of Civil Procedure 54(d)(1) provides: "costs other than attorney's fees shall be awarded as a matter of course to the prevailing party unless the court otherwise directs." The Court has discretion to award costs and may deny them in the appropriate situation. The Court finds that an award of costs as set forth below is appropriate.

A. Attorney docket fee.

Pursuant to 28 U.S.C. §1923(a) the attorney docket fee is allowed. \$ 20.00

B. Deposition transcripts.

Pursuant to 28 U.S.C. §1920(2) the following costs for deposition transcripts necessarily obtained are taxed:

David King, Vol. I and II	\$966.50
Lori Byrnes	\$226.20
Joe Martin, Vol. I	\$271.00
Tina Merz	\$ 69.40
Erv Stein, Vol. I	\$338.20
Sean Ryan, Vol. I	\$203.80
Reporting fee	\$351.50

1	Joe Martin, Vol. II	\$207.00
2	Sean Ryan, Vol. II	\$163.20
3	Reporting fee	\$162.50
4	Dr. Lewis	\$184.60
5	Dr. Boylon	\$ 85.60
6	Nate Salisbury	\$139.20
7	Reporting fee	\$150.00
8	Erv Stein, Vol. II	\$ 75.80
9	Cindy Granitir	\$ 56.60
10	Reporting fee	\$100.00
11	Mark Buchanan	\$185.60
12	Paul Huddleston	\$ 59.80
13	Dr. Jacob	\$164.15
14	David King, Vol. III	\$261.40
15	Reporting fee for items 29 and 30	\$ 75.00
16	Subtotal:	\$4,497.05

C. Trial transcripts.

Pursuant to 28 U.S.C. §1920(2) the Court finds that trial transcripts were not necessarily obtained, and costs for such transcripts are denied.

D. Witness fees and mileage costs.

Pursuant to 28 U.S.C. §1920(3) the following witness fees and mileage costs are taxed:

22	Mike Hamilton	\$252.39
23	Charles Anderson	\$245.98
24	Greg Rayl	\$139.97
25	Paul Huddleston	\$312.29
26	Tim Swett	\$237.39
27	Nate Salisbury	\$237.39
28	Subtotal:	\$1,425.41

1 **E. Fees for exemplification of copies and papers.**

2 Pursuant to 28 U.S.C. §1920(4) the Court declines to tax these fees as costs. The blow up
3 exhibits were unnecessary and the copy costs for exhibits are exorbitant.

4 Statutory costs in favor of the defendants and against plaintiffs are hereby taxed in the amount of
5 **\$5,942.46.**

6 **IT IS SO ORDERED.**

7 Dated this 7th day of January, 2008.

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10 RONALD B. LEIGHTON
11 UNITED STATES DISTRICT JUDGE
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